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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,018	06/24/2003	Joel K. Zupancic	1199 P 186	2586

7590

11/04/2005

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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/603,018

Applicant(s)

ZUPANCIC ET AL.

Examiner

Stephen Gravini

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 21-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 21-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 37 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In this application, claim 37 attempts to recite both a process and machine. Claim 1 recites an independently claimed method or process, while claim 28 recites an independently claimed machine or system, wherein the process steps are construed to be merely statements of intended use. However claim 37 begins to recite an independently claimed machine, but later recites an independently claimed process. Current Office practice allows a single patent on either a process/method or machine/system, but not both. Because claim 37 appears to claim different statutory classes of subject matter that claim is rejected under section 101 of the patent statute.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

Claims 21-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Motev et al. (US 5,239,613). Motev is considered to disclose the claimed invention comprising:

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a power intensity selector for selecting a power intensity value (please see column 6 lines 43-50);

a time cycle selector for selecting a duration value (please see column 9 lines 41-61);

a temperature selector for selecting a temperature value (please see column 8 lines 45-68);

a base resolution selector for selecting a base resolution (please see column 2 lines 19-48);

a selector for selecting at least one of a plurality of lamps to receive the power intensity output signal (again please see column 2 lines 19-48); and

an application module comprising logic for:

incrementing the counter by the power intensity value;

determining whether the counter is greater than the base resolution;

upon a determination that the counter is greater than the base resolution, generating a power intensity output signal and decrementing the counter by the base resolution, otherwise, incrementing the counter by the power intensity value (please see column 9 lines 1-40 wherein the disclosed controller, potentiometer, and solid state relay is considered to anticipate the claimed application module, along with its recited intended uses, because the power intensity is adjusted by the relay in response to counted temperature intervals based on potentiometer settings of the controller full reads on the recited power incremented counting and generating determining or incrementing);

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sensing the temperature of an element of the system (please see column 3 line 60 through column 4 line 4);

determining whether the temperature of the element of the system has exceeded the temperature value (again please see column 3 line 60 through column 4 line 4);

upon a determination that the temperature of the element of the system has exceeded the temperature value, generating a system shutdown signal (again please see column 3 line 60 through column 4 line 4);

determining whether the counter has exceeded the duration value; and,  
upon a determination that the counter has exceeded the duration value, generating a system shutdown signal ( please see column 11 lines 26-30 wherein the disclosed time switch is considered to anticipate the claimed counter determination because in both instances measurement is made to control a duration for shutdown).

### ***Response to Arguments***

Applicants' arguments with respect to claims 1-20 have been considered but are moot in view of the new ground of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571 272 4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMG

A handwritten signature in black ink that reads "Stephen Gravini". The signature is written in a cursive, flowing style.

September 9, 2005